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COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
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ADOPTION OF THE REPORT OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Draft report

Rapporteur: Ms. Teresita QUINTOS-DELES (Philippines)

Addendum

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION

Australia

1. The Committee considered the second periodic report of Australia (CEDAW/C/AUL/2) at its 251st meeting, on 31 January 1994.

2. In her introductory statement, the representative of Australia recalled her Government's commitment to eliminate discrimination against women and referred to the means used to promote the status of women. Upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1983, the Sex Discrimination Act was passed in 1984 and the Affirmative Action (Equal Employment Opportunity for Women) Act in 1986. Several legislative amendments have been made since then, strengthening the sex discrimination and sexual harassment provisions. The representative underlined that her country's federal system of government required a cooperative approach between the Federal Government and the Governments of the States and Territories to implement the Convention. The New National Agenda for Women, released in 1993 by the Federal Government, reflected many articles of the Convention and was a guideline to the year 2000.

3. The second periodic report followed the tradition of frankness about what remained to be done to implement the Convention. As part of a programme to raise awareness on equal rights, the report had been widely distributed throughout the country. Government policy advice mechanisms on the status of women had been reviewed and several new consultative mechanisms established.

4. Women's representation in public life remained one of the areas of concern, since only 14.5 per cent of the members of Australia's parliament were women. The reasons for women's absence in decision-making and strategies to influence the political agenda would be discussed in a paper on women and government in Australia and New Zealand. Women's underrepresentation in the judiciary was addressed by the Federal Attorney-General in a paper on the process of judicial appointments.

5. Violence against women, as a violation of women's human rights and a form of discrimination, was another area of national concern and a policy priority for the Office of the Status of Women. The National Strategy on Violence Against Women provided a framework for concerted action at all levels of government. A national education programme on violence against women had been launched recently.

6. The third area of concern was the situation of particularly disadvantaged groups, including indigenous women, migrant women, all women of non-English speaking background and women with disabilities. Aboriginal and Torres Strait Islander women were the most disadvantaged people in Australian society, with high infant mortality rates, low life expectancy, high unemployment figures and high incidence of domestic violence and homicide. The Aboriginal and Torres Strait Islander Commission (ATSIC) had been established as the premier body responsible for Federal Government programmes. The ATSIC board members were elected by and from the Aboriginal and Torres Strait Islander people. The Office of Indigenous Women within ATSIC coordinated the Women's Initiative Program. A national Aboriginal and Torres Strait Islander Consultative Women's Council was being considered. A comprehensive Women's Health Policy was in preparation. The representative stated that further programmes would be developed to help Aboriginal and Torres Strait Islander peoples move out of situations of dependence. The most significant development was the introduction of the Native Title Act on 24 December 1993, which would establish tribunal and court processes for determining claims to native title.

7. The representative stated that Australia, being a member of the Commission on the Status of Women during the period leading to the Fourth World Conference on Women, felt responsibility to participate actively in international mechanisms and to promote the equality of women, in partnership between States, as reflected also in the international development work of the country. Australia was focusing on the protection of women's rights within mainstream human rights forums to avoid marginalization of women's human rights.

1. General observations

8. Members of the Committee acknowledged the quality of the report, which complied with the general guidelines. A great deal of information had been made available in a self-critical manner. They thanked the representative for the extensive and very informative replies and commended the Government of Australia for the specific action taken to improve the status of women and its commitment to the implementation of the Convention. Special reference was made to the contribution of Australia to the World Conference on Human Rights and its efforts to treat the human rights of women on the same basis as all human rights.

9. Members especially welcomed the fact that women's unpaid work in the family was taken into consideration and integrated in the national accounts.

10. Members inquired about a change in government policy with regard to the reservation under article 11, paragraph 1 (c) in connection with combat duties, and under article 11, paragraph 2 (b) on maternity leave. The representative replied that the ban on women serving in combat roles had been lifted, with a small number of exclusions related to violence. Women in the Australian Defence Force could now serve in the navy, army and air force. As a result of the revised employment policy, Australia would adjust its reservation to the Convention. With regard to the second reservation, maternity leave with pay was provided for all women employed by the Commonwealth Government subject to a 12-month qualifying period for 9 to 12 weeks depending on the State or Territory. Unpaid maternity leave had become available to Australian women employees since 1979 and had been inserted in all major Federal awards and the majority of State awards. During the International Year of the Family, paid maternity leave would become one of the major issues for public debate. The Government was now taking steps to introduce universal parental leave.

11. Following this report on gradual progress achieved, members expressed their hope that the Government would be able to report on the removal of the reservations in the next periodic report.

2. General questions

12. Acknowledging Australia's ambitious programmes to raise community awareness of the problem of violence against women, the question was raised whether the incidence of such violence had decreased. The representative replied that there were a number of barriers to collecting comprehensive data. Much violence against women was not reported, particularly domestic violence. However, a greater community awareness of the criminality of violence against women has brought with it an increase in reporting. The Office on the Status of Women would establish a national coordinated data collection network with standardized statistical collection methods.

13. Asked about the impact of programmes to eliminate violence in the Aboriginal community, the representative stated that a National Family Violence Intervention Program was being implemented by ATSIC using a community

development approach. A national men's conference to discuss specific issues of family violence was held in 1993.

14. Members requested information on section 37 of the Sex Discrimination Act and asked whether this legal provision was applied for acts in conflict with Australian legislation or with the provisions of the Convention. The representative replied that such acts were only exempt by force of section 37 of the Sex Discrimination Act but were not exempt from criminal sanctions under other legislation. For example, genital mutilation would be treated as a breach of State assault laws and polygamy would be illegal under the Marriage Act.

15. The Committee welcomed the positive legislative measures, strategies and programmes for providing assistance to women that made it possible to have official legal rights on an equal basis with men. Asked why the Government still had not provided constitutional guarantees for equality of the sexes which would enrich the basic law of the States, the representative replied that it would require a constitutional amendment by referendum to entrench the right of equality of the sexes in the Australian Constitution. There has been ongoing debate since 1988 on which rights and freedoms should be explicitly guaranteed in Australian law. While approaching Australia's centenary of federation in 2001, interests in constitutional change had been renewed, and a conference on the issue of women and the Constitution would be organized in 1994.

3. Questions related to specific articles

Articles 1, 2 and 3

16. The Committee asked for an organizational chart to better understand the relationships between the women's organizations that were noted to have the common purpose of promoting the status of women. The representative replied that a distinction needed to be drawn between Government administrative and policy bodies and advisory bodies to the Government. The Office of the Status of Women (OSW) was a Division within the Federal Government's Department of the Prime Minister and Cabinet. The National Women's Consultative Council (NWCC), operating with federal funds and serviced by OSW was a means of communication between the Government and the members of national women's organizations. The Australian Council of Women was an advisory body to the Government on key issues for the Fourth World Conference on Women. The Federal Government set up the Human Rights and Equal Opportunity Commission as a statutory body to administer four Acts, including the Sex Discrimination Act 1984.

17. On the question of whether the Minister Assisting the Prime Minister for the Status of Women was a Cabinet member, the representative replied affirmatively and said that this had been achieved in a Ministerial reshuffle in December 1993.

Article 4

18. Members requested information on a study group on Aboriginal women and its authority and resources to ensure equality for indigenous women. The representative replied that she was unable to ascertain which study group was

referred to. She noted that the Office of Indigenous Women (OIW) within ATSIC was the body responsible for Federal Government programmes for Aboriginal and Torres Strait Islander women. Since 1992, annual National Aboriginal and Torres Strait Islander Women's Conferences had been held to enable representatives of indigenous women to identify important issues and provide advice to ATSIC.

19. Asked what her Government had done to increase the status of Aboriginal and Torres Strait Islander women and whether they would be treated on equal terms if land was returned to the indigenous population, the representative confirmed that the high court decision in Mabo and Others v. the State of Queensland was the most significant judicial act that paved the way for the Native Title Act 1993, which represented a political shift in the treatment of indigenous Australians, although its full impact could not yet be grasped fully. An Aboriginal and Torres Strait Islander Social Justice Commissioner had been appointed to monitor and assess the human rights of the Aboriginal and Torres Strait Islander peoples, in particular women. Women's equal rights should be a major concern when it came to redistribution of land. She agreed that many services provided for indigenous women in the past had failed because traditional values had not been taken into account in the design and implementation of programmes, but efforts were being made to remedy this situation, in particular in the health sector.

Article 5

20. Having been informed that maternity leave was widespread in the public sector, the Committee wanted to know what action had been taken to enable women to continue work in the private sector, where most quit their jobs after giving birth. The representative highlighted that the inclusion of maternity, adoption and parental leave had been supported by the Government in federal awards. Asked whether legislation relating to paternity leave was being considered, she reported that significant progress had been made on this issue, since industrial relations legislation guaranteed 12 months unpaid parental leave, which could be shared between men and women.

21. The Committee expressed its difficulty in fully understanding the reservation on maternity leave. The representative said that there was considerable discussion going on in her country on this issue. Women's participation in wage labour had increased significantly in the last 15 years. The resistance to paid maternity leave came from many sides; there was no agreed consensus on the issue even among women's organizations and trade unions. The universal social security system existing in the country cushioned cuts in income levels and was an incentive for part-time work. There also had not been strong pressure or demand for facilities to feed babies in the workplace.

22. Commenting on violence against women, the experts asked how many women had taken refuge in shelters. The representative said that a national census on a single night in May 1992 found 4,700 adults and children using the Support Accommodation Assistance Program (SAAP) as a result of family violence. Eighty-five per cent of women applied for Government benefits or pensions after taking refuge. An accurate figure on women obtaining protection orders could not be given owing to a lack of consistency in data collection by the States and Territories. In 1991, there were 603 applications for Domestic Violence Orders

in the Australian Capital Territory, 90 per cent made by women against men. Asked how women's organizations helped victims of rape within marriage and of domestic violence, the representative said that rape crisis centres, domestic violence crisis services and women's health centres provided information on legal, health, financial and crisis accommodation matters and referred women to appropriate services.

23. The Committee wanted to know how the Government viewed the problem of violence against women and if any attempts were being made to solve it. The representative stressed that the commitment of the Government was evidenced by its considerable support to women and children victims of violence and its efforts to change the law and behaviour of perpetrators. The New National Agenda defined strategies to eliminate violence against women which included further legislative reform. The Government provided considerable funding for various measures to eliminate violence, in particular for community education campaigns, the provision of shelter and income support to women escaping violence. An emphasis was put on the role of men in all aspects of violence and the re-education of aggressors. A clear message was being sent out that violence was not an accepted behaviour.

24. Replying to a question on the legal concept of the family in Australian society and measures taken to strengthen it, the representative first stated that the family, as an entity, had no legal status or legally enforceable rights or duties. The Family Law Act concerned itself with the rights, duties and responsibilities of the individuals who belonged to families of particular kinds. The law implicitly recognized the existence of certain kinds of family. Australia's federal system did not provide a comprehensive code for family relationships, but recognized people's responsibilities for their relationships. In order to promote greater support, harmony and quality of life for all families, the Government had introduced a package of family payments. Efforts had been made to provide quality child care.

Article 7

25. Members of the Committee expressed their regret that the report lacked an analysis of the obstacles to the achievement of equality for women in positions of political leadership, and asked for more information on the reasons for the disparity in figures between different institutions. The representative explained that women tended to be particularly underrepresented in high-level posts in science and technology owing to entrenched values regarding women's entry into non-traditional areas. Her Government targeted women in public life as one of three priorities for improving the status of women and, therefore, was committed to 50 per cent representation of women on Government boards by the year 2001. A register of women and a monitoring system had been established. Women's underrepresentation in public life resulted from entrenched social attitudes, parliamentary practices which conflicted with family responsibilities, lack of women in leadership positions and factionalism in the pre-selection processes in major political parties.

26. In reply to a question on the level of women's representation in local and national government, the representative said that there were higher levels of female participation in local governments and relatively low levels in national

government. This might be due to the structure of major political parties in Australia and their dominance by men. Large distances inside the country were another obstacle to women's involvement in leading positions, since a lot of women were not prepared to move to the Federal centre of government. She also noted that the Commonwealth State Ministers on the Status of Women were undertaking research on this issue.

Article 10

27. In reply to a question on action to raise female enrolment at the university level, the representative recalled that the number of women in higher education had grown steadily, reaching more than 50 per cent. More women than men had enrolled since 1987. However, women were still underrepresented in certain areas of study, and concentrated in arts, humanities, social sciences and education. The Government had published a plan for equity in higher education entitled "A Fair Chance for All", which set the goal of increasing women's share of engineering enrolments to 15 per cent and in other non-traditional courses to 40 per cent by 1995.

28. Members of the Committee requested further information on the education of Aboriginal women, their enrolment at university and their entry into the professions. The representative replied that the enrolment of Aboriginal and Torres Strait Islander women in higher education had increased by 192 per cent in the past five years, with women now representing 61 per cent of the total number of students. The rate of completion of courses remained of concern, although no detailed figures were available.

Article 11

29. The Committee was interested in the outcome of an initiative to review the restructuring of earnings. The representative confirmed her Government's strong support of a continued review of award wage relativities based on comparisons of skills and responsibilities. The ratio of female to male average weekly ordinary time earnings for a full-time adult was 83.2 per cent in 1992. A survey on workplace bargaining found that more male employees benefited from workplace-negotiated wage agreements. Reforms to the Industrial Relations Act 1988 were undertaken in consultation with women's organizations to ensure that the industrial reforms would protect women's interests. Certified agreements would continue to exist between employees, unions and employers, but flexible agreements might be made directly between employers and employees. Agreements are required to ensure "no disadvantage" in the terms and conditions of employment for the employees. To this end, a number of additional safeguards have been included.

30. Asked whether the authorities planned to propose legislation to ensure equal remuneration for work of equal value with a view to raising women's incomes, the representative stated that the Government had ensured this provision under the Industrial Relations Reform Act 1993. Efforts were made to remove discriminatory elements in wage-fixing arrangements.

31. In view of the fact that the majority of women in Australia were working part-time and assuming all family obligations, members took note of their

economic disadvantage and inherent obstacles for career advancement and participation in public activities. Further clarification on the status of part-time workers, particularly their pension and social security rights was needed. The representative confirmed that Australia had seen an increase of female part-time employment by 60 per cent compared to a growth in female full-time employment of approximately 25 per cent. Part-time workers tended to be employed more frequently on a casual basis rather than on a permanent part-time basis, which would give them continuity of employment and the possibility, generally, of accruing benefits. The Government welcomed the extension of permanent part-time employment and indicated that casual work should generally be restricted to short-term, irregular or seasonal work. The representative gave detailed information on pension and social security rights of part-time workers, in particular unemployment payments, job research and newstart allowances, family payments, pension payments and superannuation which would significantly increase coverage of part-time and casual employees. Asked what was considered part-time work, the representative said that it was employment of less than 30 hours a week.

32. The Committee noted that 44 per cent of working mothers had children under four years of age, 60 per cent had children under 14 years of age and 49 per cent were single mothers. They asked whether the 1989-1991 programme for the refurbishment and construction of centres solved the problem of child care. The representative stated that the Government had implemented growth strategies to expand the number of funded child-care places, so that 74 per cent of the demand for formal work-related care for children below school age and 51 per cent for school-age children could be met in 1992-1993.

33. Asked about women's employment in mines, the representative replied that there was resistance from the trade unions to allow women to go underground and to enter an exclusively male-dominated profession.

Article 12

34. Asked whether the nationally organized cervical screening programme had been implemented, the representative confirmed that all Health Ministers had adopted an organized approach to detection and management of cervical pre-cancers that included a national cervical screening policy based on a two-year interval, an age range of 18 to 70 years and the establishment of cervical cytology registries. In addition, a television campaign to raise awareness among women on the need of regular testing had been launched in 1993.

35. On a question related to family planning and freely available contraceptive advice for young women without parental consent, the representative said that young women had free access to advice on sexual and reproductive health in clinics funded under the Family Planning Programme.

36. The Committee wanted to know if abortion was available to young women on the same basis as for adult women. The answer was that although equal service was ensured in theory, pregnant minor women were disadvantaged in their access to abortion services, since they did not have their own Medicare card and lacked support and money for transportation and consultation of specialists.

37. The Committee asked whether the Government planned to harmonize its family-planning, contraception and abortion policies. The representative stated that abortion laws were the responsibility of State and Territory governments, whereas the Family Planning Programme was a Commonwealth initiative. A harmonization took place in the sense that the Family Planning Programme was a means to prevent unwanted pregnancies and reduce demand for abortions.

38. On a question about the decrease of maternal and child mortality rates among the Aboriginal population, the representative highlighted that the health of Aboriginal and Torres Strait Islander peoples had significantly improved in the past two decades. However, the burdens of disease continued to be comparatively high as did levels of child mortality. The proportion of maternal deaths had not decreased yet. There was a great need for an indigenous women's health policy to complement the National Aboriginal Health Strategy, the major initiative in Aboriginal and Torres Strait Islander health. Asked about legal or social barriers to artificial insemination and the public's response, in particular women's response to this process, the representative replied that the direct regulation of artificial insemination was a matter for State and Territory governments. The Commonwealth Government subsidized artificial insemination through the national health insurance scheme. There was evidence that the majority of the population accepted artificial insemination as part of wider reproductive technologies but was concerned about the confidentiality of information, ethnic cultural values and the rights of the child. Women were particularly concerned about the cost and emotional stress involved.

Article 15

39. The Committee commented on a recent controversy about gender bias in the Courts that had resulted in a referral to the Australian Law Reform Commission. It asked whether the Government would introduce legislation or encourage Law Societies and the Judiciary to adopt and implement the final recommendation of the Commission. The representative stated that her Government had taken action to address the issue of gender bias in the legal system. The Attorney-General had acknowledged that the process of judicial appointments should comprise suitably qualified women as well as other underrepresented groups. The Federal Government recognized the importance of judicial education. Gender bias awareness programmes for magistrates and judges had been developed.

Article 16

40. The Committee wanted to know how the Government intended to enact and enforce legislation designed to comply with the Convention and to protect women if marriages contracted, according to customary law, conflicted with the Convention. The representative said that Aboriginal customary marriages did not comply with the provision of the Marriage Act 1961 and therefore were not recognized as valid marriages, but could be accepted as de facto heterosexual relationships in some State jurisdictions. The Australian Law Reform Commission recommended that Aboriginal customary marriages should be recognized for specific purposes, such as social security law, and for giving legitimate status to the children of such marriages. There were no plans to legislate with respect to Aboriginal customary marriage.

41. The Committee noted that the Australian Law Reform Commission had made certain recommendations concerning marriage practices, such as polygamous marriages, which might comply with religious or customary law but be in conflict with the principles of the Convention. Asked whether there were plans to legislate and enforce domestic law which would protect women from traditions that endangered their health and caused them and their children hardship, the representative stated that marriage, according to the law in Australia, was the union of man and woman voluntarily entered into for life and a contract of valid polygamous marriage was not possible according to the law. A de facto polygamous marriage contracted outside Australia would be recognized only if valid according to the common law rules of private international law. Any religious or customary marriage which did not comply with the Act's provisions was not valid.

42. On a question with regard to de facto relationships and the legal action taken to solve the problem of custody and guardianship of children, inheritance, maintenance and allocation of household property, the representative said that the effect of a de facto relationship was governed by State and Territory legislatures and courts, except in relation to children of such relationships. Jurisdiction therefore varied on the issue of share in the intestate estate of a deceased de facto partner. Guardianship, custody and maintenance of children was a matter for the Family Court or the Federal Child Support Agency.